

REMARKS

Claims 1-62 are pending in the application. Claims 1, 4, 5, 6, 22, 23, and 34 were amended in Applicant's prior response. Applicant has carefully reviewed the Office Action mailed October 16, 2008.

Applicant respectfully requests reconsideration of this application in view of the following remarks.

Applicant submits that the present Office Action is in substantial part identical to the prior Office Action mailed February 25, 2008, except for the acknowledgement of an error in such prior Office Action, the clarification of rejection of the claims under 35 U.S.C. 102, and the related listing of all claims in the application being rejected under 35 U.S.C. 102.

In Applicant's prior response of June 25, 2008, Applicant's remarks addressed the asserted deficiencies as set forth in the prior Office Action, and which are, in substantial part, also set forth in the present Office Action. Applicant requests that the Examiner review and respond to such remarks.

A. The 35 U.S.C. 112 Rejection

The Office Action rejects claims under 35 U.S.C. 112, second paragraph, asserting deficiencies with the claims. In response to the rejection, the claims were amended in Applicant's June 25, 2008 Response.

Applicant respectfully submits that the claims satisfy the requirements of 35 U.S.C. 112. Withdrawal of the rejection is requested.

B. The 35 U.S.C. 102 Rejection

In paragraph 2 of the Office Action, claims 1-62 are rejected under 35 U.S.C. 102(b) as being anticipated by Phillips et al. (US Patent No. 7,133,848, hereinafter Phillips). This rejection is traversed.

As to claim 1, the Office Action asserts:

In reference to claims 1, 24, 46, 51 and 56, Phillips discloses a method, system and apparatus for analyzing a financial services pricing process comprising the steps of:

a. receiving data in at least one input file of a pricing process summary tool from at least one data source (col. 2, line 50+);

b. processing the received data using at least one data analysis tool of the pricing process summary tool (col. 3);

c. generating a pricing process summary including the sub-steps of **measuring a plurality of predetermined pricing metrics, and graphing the predetermined pricing metrics** (col. 3);

d. wherein the pricing process summary identifies a **present value of each of the predetermined pricing metrics in relation to others of the predetermined pricing metrics** (col. 3-4).

Applicant traverses such rejection and assertions. Claim 1 recites “predetermined pricing metrics” and particular manipulation of such predetermined pricing metrics. The Office Action fails to set forth, nor is it apparent based on Applicant’s review, what teaching of Phillips allegedly constitutes the “predetermined pricing metrics” and the manner in which Phillips allegedly teaches the claimed manipulation of such predetermined pricing metrics.

Under 35 U.S.C. §102, the Patent Office bears the burden of presenting at least a prima facie case of anticipation. *In re Sun*, 31 USPQ2d 1451, 1453 (Fed. Cir. 1993) (unpublished). Anticipation requires that a prior art reference disclose, either expressly or under the principles of inherency, each and every element of the claimed invention. *Id.* “A prior art reference anticipates a claim only if the reference discloses, either expressly or inherently, **every limitation of the claim.**” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir.

1987). “The *identical invention* must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226 (Fed. Cir. 1989). “Absence from the reference of *any* claimed element negates anticipation.” *Kloster Speedsteel AB v. Crucible, Inc.*, 793 F.2d 1565, 1571 (Fed. Cir. 1986).

Applicant respectfully submits that the Office Action fails to satisfy such burden and fails to set forth support for the asserted 35 U.S.C. 102 rejection. The Office Action essentially sets forth the claimed features, and references column cites in Phillips. Applicant respectfully submits that such cannot satisfy the requirements of 35 U.S.C. 102, and in particular given that the basis of the rejection is not clear upon a review of Phillips.

For example, Applicant notes Phillips in column 3, lines 1-20, wherein Phillips speaks to utilization of historical data. Applicant further notes Phillips in column 3, line 58 - column 4, line 5. Therein, Phillips sets forth:

The transaction data in the transaction database 120 generally includes information that specifies the details of each transaction, such as the date of the transaction, the transacted product, the price for the transacted products, the parties involved in the transaction, etc. Each transaction has several attributes specifying its different features, and by exploiting the similarities within the attributes, the transactions can be grouped by market segments. Furthermore, different market segments may be grouped into mutually exclusive and collectively exhaustive sets called channel segments (CS). Within this disclosure, channel segments are defined to be aggregations of transactions along market segment dimensions. For example, geographic area, size of sales, method of delivery, buyers' characteristics, etc. may be used to define channel segments. The channel segments are specified by the user through the input device 10, and the channel segments must combine to form a mutually exclusive, exhaustive set on the universe of all sales transactions (the "market"). ...

However, such teachings of Phillips cannot fairly be interpreted to disclose the particulars of claim 1, including:

...
measuring predetermined pricing metrics using the received data, and
graphing the predetermined pricing metrics;

wherein the waterfall **identifies the present value of each of the predetermined pricing metrics in relation to others of the predetermined pricing metrics.**

Applicant requests clarification or withdrawal of the rejection of claim 1 under 35 U.S.C. 102. Further, Applicant submits that claims 24, 46, 51 and 56 are allowable for reasons similar to those set forth above regarding claim 1.

The Assertions as Set Forth in Paragraphs 3-5 of the Office Action

In paragraphs 3-5, the Office Action sets forth assertions regarding claims 2-23, 25-39, 40-45, 47-50, 52-55, and 57-62.

Applicant submits that the assertions are deficient as supporting the 35 U.S.C. 102 rejection. For example, on page 4, the Office Action asserts:

In reference to claims 2-23 and 25-39, Phillips discloses a method, system and apparatus for measuring various types of data, including pricing metrics and/or the measurement thereof:

- e. Predetermined pricing metrics;
- f. Discount;
- g. Incentives;
- h. Commissions;
- I. Fees;
- J. Underwriting; and
- k. Market gap.
- I. Also, implementing an action plan;
- m. Receiving various types of data;
- n. Reviewing the pricing process;
- o. Identifying opportunities;
- p. Defining pricing metrics (at least col. 2-4; col. 6-9 for sales data, cost data, supply data and price data).

Accordingly, the Office Action appears to assert that the mere measurement of such parameters teaches the features as recited in the various claims. Applicant traverses such position. Such claims recite various particulars and manipulation of parameters in a particular manner.

The Office Action fails to fairly reflect the particulars of such claimed features and clearly fails to satisfy the requirements of 35 U.S.C. 102. Withdrawal of the assertions as set forth in paragraphs 3-5 is appropriate.

C. Conclusion

For at least the reasons outlined above, Applicant respectfully asserts that the application is in condition for allowance. Favorable reconsideration and allowance of the claims are respectfully solicited.

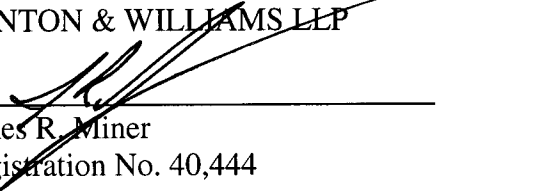
Should the Examiner believe anything further is desirable in order to place the application in even better condition for allowance, the Examiner is invited to contact Applicant's undersigned representative at the telephone number listed below.

For any fees due in connection with filing this Response the Commissioner is hereby authorized to charge the undersigned's Deposit Account No. 50-0206.

Respectfully submitted,

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Date: JAN. 16, 2009

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